

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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CINCINNATI INSURANCE COMPANY,

Plaintiff-Appellant,

and

CUSTER OFFICE ENVIRONMENT and  
QUIMBY WALSTROM PAPER COMPANY,

Plaintiffs.

v

BUTLER MANUFACTURING COMPANY,

Defendant-Appellee,

and

WOLVERINE BUILDING GENERAL  
CONTRACTORS, a/k/a WOLVERINE  
BUILDING, INC.,

Defendant.

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UNPUBLISHED  
September 23, 2003

No. 240463  
Kent Circuit Court  
LC No. 00-09637-CZ

Before: Whitbeck, C.J., and O'Connell and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition to defendant Butler under MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This case arose when a warehouse roof and wall collapsed under the weight of snow on January 11, 1999, damaging commercial goods that plaintiffs Custer and Quimby had stored in leased space inside the warehouse. Plaintiff Cincinnati insured the stored goods of Custer and Quimby and now seeks recovery as their subrogee. Cincinnati attributes the collapse to defective prefabricated building components that Butler designed and manufactured.

Butler delivered the components to the general contractor, defendant Wolverine, during the warehouse's construction near the end of 1994, so the Uniform Commercial Code's four-year statute of limitations expired before the roof collapsed. MCL 440.2725(2). Nevertheless, Cincinnati brought this cause of action in tort based on Butler's allegedly negligent design of the building and its components.

Cincinnati first argues that the trial court incorrectly applied the economic loss doctrine and dismissed its tort claims because the doctrine only applies when the UCC supplies a remedy for the wrong alleged. According to Cincinnati's argument, its subrogors could not find relief under the UCC even if they took legal action sooner, so tort law, not the UCC, applies. Without speculating about what Cincinnati's subrogors could have done earlier, we disagree. We review de novo a trial court's decision to grant summary disposition under MCR 2.116(C)(10).

The economic loss doctrine limits commercial users of defective goods to remedies under the UCC when the users suffer only commercial damages. *Neibarger v Universal Cooperatives, Inc.*, 439 Mich 512, 527-528; 486 NW2d 612 (1992). In Michigan, the doctrine not only applies when the product damages itself, but also extends to any purely economic loss that results from the product's defect. *Citizens Ins Co v Osmose Wood Preserving, Inc.*, 231 Mich App 40, 44; 585 NW2d 314 (1998). Further, we apply the doctrine regardless of any privity of contract between the manufacturer of the goods and the commercial user as long as "(1) the parties or others closely related to them had the opportunity to negotiate the terms of the sale of the good or product causing the injury, and (2) their economic expectations can be satisfied by contractual remedies." *Quest Diagnostics, Inc v MCI WorldCom, Inc.*, 254 Mich App 372, 380; 656 NW2d 858 (2002).

In *Citizens*, *supra*, we held that the economic loss doctrine precluded a restaurant's insurer from suing a fire retardant manufacturer in tort. A subcontractor applied the retardant to wood that builders used to construct the restaurant. *Id.* at 45-46. The retardant caused the wood to rapidly deteriorate, and the deterioration led to collapse and an insurance claim. *Id.* at 42. Our decision turned on the fact that the manufacturer sold the retardant to a commercial entity that, in turn, used it to build a structure for another commercial entity. *Id.* at 45-46. We reasoned that it would poorly serve the commercial expectations bolstered by the economic loss doctrine to permit a tort recovery when each transaction in the series of events had a commercial nature. *Id.* at 44-45.

While Cincinnati depicts itself and its subrogors as bystanders to the transactions that led to the warehouse collapse, see *Quest*, *supra* at 385, they are only one inconsequential step removed from the position of the restaurant owner in *Citizens*. The warehouse owner or its predecessor had a building constructed for commercial purposes, just like the restaurant owner in *Citizens*. When Custer and Quimby entered a commercial lease for storage space in the warehouse, they merely added another link to the chain of commercial transactions and perpetuated the doctrine's applicability. The commercial lease between Cincinnati's subrogors and the warehouse owner provides the necessary relationship and potential contractual relief that *Quest* requires, so Butler did not need to show direct privity for the doctrine to apply. Because *Citizens* required application of the economic loss doctrine and dismissal of Cincinnati's tort claims, the trial court did not err.

Next, Cincinnati contests Butler's summary disposition motion, claiming that Butler supported the motion with a defective affidavit and ultimately failed to demonstrate that its sale of components rather than its design services dominated the transaction. We disagree. Technical defects in its supporting affidavit aside, Butler produced extensive documentary evidence that it primarily provided goods to Wolverine, which Wolverine used to build the warehouse. While Cincinnati and Wolverine produced some evidence that Butler designed the building's components and ultimately the building itself, the same evidence also clearly showed that Butler *primarily* provided structural components, not services, to Wolverine. See *Citizens, supra* at 45 (holding that a manufacturer who provides instructions on the proper use of a product does not primarily provide a service). Therefore, the trial court did not err when it granted summary disposition to Butler.

Finally, Cincinnati argues that the trial court erroneously denied its motion to amend the complaint. We disagree. The economic loss doctrine limits Cincinnati to UCC remedies, and its opportunity to pursue those remedies passed before it filed its complaint. Therefore, no amendment could help Cincinnati, and the trial court correctly denied its motion to amend.

Affirmed.

/s/ William C. Whitbeck  
/s/ Peter D. O'Connell  
/s/ Jessica R. Cooper